DIGEST OF OTHER RECENT VIRGINIA DECISIONS.

Supreme Court of Appeals.

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases are reported in full.

HOMESTEAD FIRE INSURANCE CO. *v.* ISON.

Sept. 9, 1909.

[65 S. E. 463.]

1. Insurance (§ 358*)—Premiums—Extension of Credit by Agent.—Where an insurance company gave its agent full power to deliver policies and collect premiums, and treated a premium as paid, it was bound by the agent's act in extending credit to insured for a part of the premium, or in taking out part of it in trade.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. §§ 915, 1034; Dec. Dig. § 358.* 7 Va.-W. Va. Enc. Dig. 780.]

2. Time (§ 9*)—Computation—Excluding First Day.—Where an act is to be performed within a specified period from or after a day named, the rule is to exclude the first day designated and to include the last day of the specified period.

[Ed. Note.—For other cases, see Time, Cent. Dig. § 11; Dec. Dig. § 9.* 13 Va.-W. Va. Dig. 209.]

3. Insurance (§ 335*)—Policy—"Issuance."—The legal definition of "issuance" is the act of sending out officially, delivering for use, and putting into circulation; and the issuance of an insurance policy is the date of its delivery to insured, and a provision therein requiring an inventory of insured goods within 30 days of the issuance of the policy meant 30 days from its delivery, and not from its date.

[Ed. Note.—For other cases, see Insurance, Dec. Dig. § 335.* 7 Va.-W. Va. Enc. Dig. 779, 782.]

4. Insurance (§ 229*)—Cancellation—Misrepresentation of Agent—Effect.—Where an insurance agent got a fire policy from insured's wife upon the pretense that he had charged too much and wanted to refund, and immediately marked it canceled, and failed to give insured five days' notice of cancellation, as required, before loss, the policy would be considered in full force at the time of the fire.

[Ed. Note—For other cases, see Insurance, Cent. Dig. § 501; Dec. Dig. § 229.* 7 Va.-W. Va. Enc. Dig. 790; 5 id. 70.]

5. Insurance (§ 335*)—Iron Safe Clause.—An "iron safe clause" in a fire policy required insured to make an inventory within 30 days from the issuance of the policy and required books to be kept of the business. Held, that the clause only required books to be kept after

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*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, and Reporter Indexes.

the inventory was taken, so that the failure to keep such books did not defeat a recovery, where a loss occurred within 30 days from the issuance of the policy and no inventory had been made.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. § 853; Dec. Dig. § 335.* 5 Va.-W. Va. Enc. Dig. 85; 14 id. (Supt.) 447.]

6. Insurance (§ 539*)—Notice of Loss—Sufficiency.—The day after the fire insured put his claim against the insurer in the hands of his attorneys, who immediately wrote and posted a letter to the agency which had issued the policy, giving them notice of the fire. An agent of the company was present at the fire, and therefore had full knowledge. There was a delay of a few days in giving the insurer notice, occasioned by the agent having procured the policy from insured by misrepresentation shortly before the fire. Held, that there had been due diligence under the circumstances, and that the notice of loss was sufficient.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. §§ 1328-1336; Dec. Dig. § 539.* 5 Va.-W. Va. Enc. Dig. 101, 102; 14 id. (Supt.) 450.]

7. Insurance (§ 563*)—Policy—Construction—Separation of Damaged Goods.—A provision in a fire policy requiring separation of damaged and undamaged goods after a fire is directory merely, and a failure to comply with it would not avoid the policy, but would only reduce the recovery by such amount as was lost to the insurer by failure to comply.

[Ed. Note.—For other cases, see Insurance, Dec. Dig. § 563.*]

8. A witness called to speak as to general character must be acquainted with the general reputation of the person among people who know him. If he cannot testify as to this, he is incompetent.

[13 Va.-W. Va. Enc. Dig. 970.]

9. Trial (§ 296*)—Misleading Instructions—Cure by Other Instruction.—In an action on a fire policy, under which there could be a recovery of three-fourths of the value of the goods damaged or destroyed by fire, a charge that, if the jury find for plaintiff, they should find for three-fourths the actual cash value of the total stock of goods insured by the policy, as fixed by them, not exceeding $1,000, though misleading, as liable to be taken to mean three-fourths of the stock of goods insured, was not prejudicial, where the charge was fully explained to the jury, especially where the evidence sustained the jury's conclusion that the value of the goods destroyed was $1,000 and a verdict for $750 was rendered.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 705-713, 715, 716, 718; Dec. Dig. § 296.* 7 Va.-W. Va. Enc. Dig. 445; 1 id. 601, et seq.]

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*For other cases see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.

10. Appeal and Error (§ 1064*)—Review—Harmless Error—Misleading Instructions.—Where appellant is not prejudiced by a misleading charge, the judgment will not be disturbed because of it.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 4219, 4221-4224; Dec. Dig. § 1064.* 1 Va.-W. Va. Enc. Dig. 601, et seq.]

Judgment affirmed. All the judges concur.

THOMAS, ANDREWS & CO. *v.* TOWN OF NORTON.

Sept. 9, 1909.

[65 S. E. 466.]

1. Injunction (§ 164*)—Proceedings—Dismissal.—In a suit to enjoin the collection of alleged illegal taxes, their payment by complainant before a final decree was rendered required the dissolution of the temporary injunction and dismissal of the bill, but without prejudice.

[Ed. Note.—For other cases, see Injunction, Cent. Dig. § 366; Dec. Dig. § 163.* 7 Va.-W. Va. Enc. Dig. 524, 572, et seq.]

2. Dismissal and Nonsuit (§ 53*)—Grounds.—Where there is no actual controversy involving substantial rights between the parties of record, the case will be dismissed.

[Ed. Note.—For other cases, see Dismissal and Nonsuit, Dec. Dig. § 53.* 1 Va.-W. Va. Enc. Dig. 129.]

Judgment affirmed as modified. All the judges concur.

HANSBROUGH et al. *v.* TRUSTEES OF PRESBYTERIAN CHURCH.

Sept. 9, 1909.

[65 S. E. 467.]

Wills (§ 597*)—Construction—Estates Created—Fee Simple.—Under the rule that an estate for life, coupled with absolute power of disposition, either express or implied, comprehends everything, and the devisee takes the fee, where testator gave all his property to his wife, "to have and hold the same for her own personal use and benefit, and to use the whole of my estate during her life," directing that any amount remaining unexpended at her death be divided, etc., the wife took a fee simple.

[Ed. Note.—For other cases, see Wills, Cent. Dig. § 1319; Dec. Dig. § 597.* 13 Va.-W. Va. Enc. Dig. 826; 5 id. 166.]

Judgment reversed. All the judges concur.

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*For other cases see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.